

DETAILED ACTION

Response to Amendment

1. The amendment filed June 16, 2009 has been entered and fully considered.
2. Claims 1-4, 6-13 are pending, claim 5 was cancelled by the amendment.

Information Disclosure Statement

3. The information disclosure statement filed July 17, 2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1, 4 and 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over SILLEY (US 5861305) in view of FINDLEY (US 4892830).
- a. With respect to claim 1, SILLEY teaches a laboratory apparatus comprising first (central lock) and second cabinets (Column 5, lines 42-44, Figure 1) interconnected by a passageway with means for closing the passageway (Column 6, lines 1-11). SILLEY also teaches the first cabinet has an open front (front door) (Column 5, lines 45-46) and the second cabinet being substantially sealed (Column 5, lines 66-67) with means for controlling the temperature and the level of at least one gas in the second cabinet (Column 2, lines 15-29) as well as means to allow external inspection of the contents of the second cabinet (Column 1, lines 49-52). SILLEY does not explicitly disclose the passageway comprising first and second closures and means for changing the environmental

conditions of the passageway. However, FINDLEY teaches a laboratory apparatus including a passageway (airlock) with spaced apart means for closing the passageway comprising first and second closures (internal, external doors) and a first closure (external door) that has opened is closed before the second closure (interior door) can be opened (Column 6, lines 37-68). FINDLEY also teaches providing means for changing the air (environmental conditions) in the space between the two closures (gas inlet) to prevent the passageway from becoming the source of the admission of atmospheric air into the cabinet (Column 7, lines 5-10). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the passageway of SILLEY to include the first and second spaced apart closures as taught by FINDLEY because they prevent the loss of control of gas component concentrations, humidity, and temperature levels in the apparatus while allowing the easy transfer of biological materials to the inside of the apparatus (Column 6, lines 28-35). SILLEY also teaches controlling the atmosphere of the first cabinet (Column 2, lines 19-29) but does not explicitly disclose means for circulating the air. However, FINDLEY teaches a laboratory apparatus with means to circulate air (intake, outlet vents, and fans) in the chamber (Column 4, lines 28-44). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the laboratory apparatus of SILLEY to include the air circulation means as taught by FINDLEY because it allows for conditioning the air to provide the desired atmosphere (Column 4, lines 28-44).

- b. With respect to claim 4, SILLEY teaches providing means for controlling the temperature inside the first and second cabinets (Column 2, lines 15-17).
- c. With respect to claim 6, FINDLEY teaches the closures are interlocked to provide a time delay between opening of the closures (Column 6, lines 40-61) to prevent the undesirable loss of control of gas concentrations, humidity and temperature levels while transferring materials by maintaining the sealed condition of the second cabinet (Column 6, lines 28-35).
- d. With respect to claim 7, FINDLEY also teaches providing means for changing the air in the space between the two closures (gas inlet) because it prevents the passageway from becoming the source of the admission of atmospheric air into the cabinet (Column 7, lines 5-10).
- e. With respect to claim 8, FINDLEY also teaches providing means for transporting the cultures between the first and second cabinets through the passageway (sliding tray) because it allows for easily transferring the cultures into and out of the cabinet (Column 6, lines 44-67).
- f. With respect to claim 9, SILLEY teaches the means for controlling the level of gas in the cabinet is arranged to control the level of oxygen (Column 1, lines 53-54, and Column 2, lines 15-17).
- g. With respect to claim 10, SILLEY does not explicitly disclose providing means for controlling the humidity in the second cabinet. However, FINDLEY teaches means for controlling the humidity (water reservoir) in the cabinet because high humidity is necessary to prevent excessive evaporation of the

culture media in which the biological materials being maintained in the cabinet are stored (Column 4, lines 37-44).

h. With respect to claim 11, SILLEY teaches providing means for creating a pressure inside the cabinet which is greater than atmospheric pressure (Column 4, lines 33-39).

i. With respect to claim 12, SILLEY teaches the second cabinet comprises a transparent front wall through which the cultures can be inspected (Column 1, lines 51-52).

j. With respect to claim 13, SILLEY teaches providing means to enable manipulation of the cultures in said second cabinet (Column 6, lines 12-34).

7. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over SILLEY (US 5861305) in view of FINDLEY (US 4892830) as applied to claims 1, 4-13 above, and in further view of LUETKEMEYER (US 5858041).

a. With respect to claim 2, the above combination of SILLEY and FINDLEY teaches the limitations of the claim including circulating the air, but does not explicitly disclose the circulated air is passed through a filter. However, LUETKEMEYER teaches a laboratory apparatus in which a HEPA filter is used to alleviate the risk of contamination of the culture by airborne particles in the circulated air in the first cabinet (clean zone) (Column 4, lines 39-62). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the laboratory apparatus as taught by the combination of SILLEY and

FINDLEY to include the filter for circulating air as taught by LUETKEMEYER because it maintains a clean laboratory zone from airborne particles (Column 4, lines 47-56).

b. With respect to claim 3, the combination of SILLEY and FINDLEY teaches a laboratory apparatus with air circulated in the first cabinet as described in the above rejection of claim 1, but does not explicitly disclose the airflow being a laminar flow extending downwardly. However, LUETKEMEYER teaches a laboratory apparatus (flow hood) which has a downwardly (vertical) laminar flow parallel to the open front of the cabinet (Column 1, lines 24-44). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the laboratory apparatus of SILLEY and FINDLEY to include the vertical laminar flow as taught by LUETKEMEYER because it protects workers or users of the cabinet as well as the surrounding environment from coming into contact with toxic or irritant substances that are manipulated inside the cabinet (Column 1, lines 24-44).

Response to Arguments

8. Applicant's arguments with respect to amended claim 1 have been considered but are moot in view of the new ground(s) of rejection.
9. In response to applicant's arguments against the references individually, specifically SILLEY, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re*

Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

10. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DANIELLE HENKEL** whose telephone number is

(571)270-5505. The examiner can normally be reached on Mon-Thur: 11am-8pm,
Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on 571-272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DANIELLE HENKEL/
Examiner, Art Unit 1797

/William H. Beisner/
Primary Examiner, Art Unit 1797